

ACDA/GC

*Pls return
to G. Burn*

September 5, 1968

Honorable John Sherman Cooper
United States Senate
Washington, D. C. 20510

Dear Senator Cooper:

The Secretary has asked me to reply to your letter of August 12, 1968 concerning the Non-Proliferation Treaty.

I am enclosing a memorandum which sets forth the answers to your specific questions.

If there is any further information we may provide, please let me know.

Sincerely yours,

William B. Macomber, Jr.
Assistant Secretary for
Congressional Relations

Attachment:

As stated.

ACDA/GC:REStein
Retyped:H:JEBriggs:bj 8/30/68

DECLASSIFIED BY/RELEASE AUTHORITY:

RICHARD ZORN, SENIOR REVIEWER

U.S DEPARTMENT OF STATE

RELEASE DECISION: RELEASE IN FULL

DATE: JANUARY 15, 2020

MEMORANDUM IN RESPONSE TO QUESTIONS ON THE NPT
RAISED IN SENATOR COOPER'S LETTER TO SECRETARY RUSK
DATED AUGUST 12, 1968

Question: 1. In what way, if any, does the Non-Proliferation Treaty amend, modify, supplement, or incorporate by reference any of the provisions of the Nuclear Test Ban Treaty, the Treaty on Outer Space, the Statute of the International Atomic Energy Agency, the NATO Treaty or any of our other mutual defense treaties?

Answer: (a) Nuclear Test Ban Treaty

The Non-Proliferation Treaty (NPT) does not amend, modify, or supplement any of the provisions of the Nuclear Test Ban Treaty. The NPT does make reference to the Preamble of the Test Ban Treaty in its tenth preambular paragraph.

As pointed out in Chairman Seaborg's testimony before the Foreign Relations Committee on July 12, 1968, the NPT "is not intended to modify the provisions of the limited Test Ban Treaty. Therefore, in providing a nuclear explosion service pursuant to Article V, the United States will be obligated to observe the requirements of the limited Test Ban Treaty." (Hearings, p.105). As he also pointed out, Article V of the NPT may make it easier to modify or amend the Test Ban Treaty should such modification or amendment be required to perform certain nuclear explosion services.

(b) The Treaty on Outer Space

The Non-Proliferation Treaty does not amend, modify, supplement or incorporate by reference any of the provisions of this treaty.

(c) The Statute of the International Atomic Energy Agency

Article III of the NPT makes two references to the Statute of the International Atomic Energy Agency -- in each case to the effect that non-nuclear weapon States shall conclude safeguards agreements with the International Atomic Energy Agency "in accordance with the Statute of the International Atomic Energy Agency". The NPT does not amend, modify, supplement or incorporate by reference any of the provisions of this Statute.

DECLASSIFIED BY/RELEASE AUTHORITY: .

RICHARD ZORN, SENIOR REVIEWER

U.S DEPARTMENT OF STATE

RELEASE DECISION: RELEASE IN FULL

DATE: JANUARY 15; 2020

UNCLASSIFIED

(d) The NATO Treaty or any of our other mutual defense treaties

The Non-Proliferation Treaty does not amend, modify, supplement or incorporate by reference any of the provisions contained in the NATO Treaty or any of our other mutual defense treaties.

Question: 2. Please list the bilateral or multilateral Executive Agreements presently in force which the United States has entered into with other countries pursuant to Chapter 11 of the Atomic Energy Act of 1954, as amended. In what way, if any, does the Non-Proliferation Treaty amend, modify, supplement or incorporate by reference any of the provisions contained in these Agreements?

Answer: The existing international agreements under Chapter 11 of the Atomic Energy Act fall into two broad categories: Agreements for Cooperation for Mutual Defense Purposes and Agreements for Cooperation in the Civil Uses of Atomic Energy.

A. Agreements for Cooperation for Mutual Defense Purposes

The Non-Proliferation Treaty will not have the effect of amending, modifying, supplementing or incorporating by reference any of the 12 agreements in this category, which are listed below:

	Effective Date
NATO -----	Mar. 12, 1965
Australia -----	Aug. 14, 1957
Belgium -----	Sept. 5, 1962
Canada -----	July 27, 1959
France (Land-Based Prototype Fuel Supply Agreement) -----	July 20, 1959
France -----	Oct. 9, 1961
Germany, Federal Republic of -----	July 27, 1959
Greece -----	Aug. 11, 1959
Italy -----	May 24, 1961
Netherlands -----	July 27, 1959
Turkey -----	July 27, 1959
United Kingdom -----	Aug. 4, 1958

B. Agreements for Cooperation in the Civil Uses of Atomic Energy

The 33 U.S. agreements for cooperation in the civil uses of atomic energy now in effect are listed below:

INTERNATIONAL AGREEMENTS(1) Bilateral Agreements for Cooperation in the Civil Uses of Atomic Energy

<u>Country</u>	<u>Scope</u>	<u>Effective Date</u>	<u>Termination Date</u>
Argentina	Research and Power	July 27, 1962	July 26, 1969
Australia	Research and Power	May 28, 1957	May 27, 1997
Austria	Research	Jan. 25, 1960	Jan. 24, 1970
Brazil	Research	Nov. 9, 1966	Aug. 2, 1975
Canada	Research and Power	July 21, 1955	July 13, 1980
China, Republic of	Research	July 18, 1955	July 17, 1974
Denmark	Research	July 25, 1955	July 24, 1973
Greece	Research	Aug. 4, 1955	Aug. 3, 1974
India	Research and Power	Oct. 25, 1963	Oct. 24, 1993
Indonesia	Research	Sept. 21, 1960	Sept. 20, 1970
Iran	Research	Apr. 27, 1959	Apr. 26, 1969
Ireland	Research	July 9, 1958	July 8, 1978
Israel	Research	July 12, 1955	Apr. 11, 1975
Italy	Research and Power	Apr. 15, 1958	Apr. 14, 1978
Japan	Research and Power	July 10, 1968	July 9, 1998
Korea	Research	Feb 3, 1956	Feb. 2, 1976
Norway	Research and Power	June 8, 1967	June 7, 1997
Philippines	Research and Power	July 19, 1968	July 18, 1998
Portugal	Research	July 21, 1955	July 20, 1969
South Africa	Research and Power	Aug. 22, 1957	Aug. 21, 1977
Spain	Research and Power	Feb. 12, 1958	Feb. 11, 1988
Sweden	Research and Power	Sept. 15, 1966	Sept. 14, 1996
Switzerland	Research and Power	Aug. 8, 1966	Aug. 7, 1996
Thailand	Research	Mar. 13, 1956	Mar. 12, 1975
Turkey	Research	June 10, 1955	June 9, 1971
United Kingdom	Research	July 21, 1955	July 20, 1976
United Kingdom	Power	July 15, 1966	July 14, 1976
Venezuela	Research and Power	Feb. 9, 1960	Feb. 8, 1970
Vietnam	Research and Power	July 1, 1959	June 30, 1974
Colombia	Research	March 29, 1963	March 28, 1977*

* Subject to Colombian Ratification

(2) Agreements for Cooperation with International Organizations

<u>Organization</u>	<u>Scope</u>	<u>Effective Date</u>	<u>Termination Date</u>
European Atomic Energy Community (Euratom)	Joint Nuclear Power Program	Feb.18,1959	Dec.31,1985
Euratom	Additional Agreement to Joint Nuclear Power Program	July 25,1960	Dec.31,1995
International Atomic Energy Agency (IAEA)	Supply of materials etc.	Aug.7,1959	Aug.6,1979

The Non-Proliferation Treaty will not have the effect of amending, modifying, supplementing or incorporating by reference any of these agreements in any respect not discussed below.

In Article III of the Non-Proliferation Treaty, each non-nuclear-weapon state party to that Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency, on all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction, or carried out under its control anywhere. This undertaking may be considered to supplement the safeguards provisions of the bilateral agreements for cooperation in the civil uses of atomic energy between the United States and the parties to those agreements.

In the second paragraph of Article III, each party to the treaty undertakes not to provide nuclear material and related equipment to any non-nuclear-weapon state "unless the source or special fissionable material shall be subjected to the safeguards required by this article," paragraph 4 of which we believe provides ample time in which to conclude the negotiations necessary to meet such requirements.

No difficulties are expected to arise under the latter provision since of the thirty-three Agreements for Cooperation now in force, twenty-seven contain an article providing for the transfer of safeguards responsibilities contained in these bilateral agreements to the IAEA safeguards under a trilateral arrangement.

The article also provides that in the event of failure to reach agreement on the terms of such trilateral agreements, either party may terminate the agreement. Trilateral agreements have already been brought into force under eighteen of twenty-seven agreements for cooperation.^{1/}

The six remaining cases in which we have bilateral agreements include Italy, the UK, Canada, the IAEA and two with Euratom. In the first case, since the Italians are members of the European Communities, we have been carrying on our cooperation with them almost exclusively through our agreements with Euratom and do not expect to enter into any significant new projects with them under the authority of the Italian agreement, which was executed a number of years ago.

Another is our civil research bilateral with the United Kingdom. However, this case is an exception insofar as the NPT is concerned, since the United Kingdom is a nuclear-weapon state and would not be subject to the provisions of Article III of the NPT. It should be pointed out, nevertheless, that the United Kingdom has offered to place its nuclear activities "subject to exclusions for national security reasons only", under international safeguards at such time as international safeguards are brought into effect in non-nuclear-weapon states under the NPT.

Canada has signed the NPT and has given every indication of becoming a party to the Treaty and undertaking full acceptance of the requisite safeguards on all its peaceful nuclear activities.

Of the remaining three Agreements for Cooperation, two are with Euratom and one with the IAEA itself. With respect to Euratom, the following observations are pertinent:

(i) Three of the five non-nuclear-weapon Euratom members (Belgium, the Netherlands and Luxembourg) have already signed the NPT, after full consultation within the European Communities, and the other two (The Federal Republic of Germany and Italy) are expected to sign in the future. The three who signed have each pointed out that they do not consider that there is any incompatibility between the goals pursued by the NPT and the Euratom Treaty; that the safeguards provided for in Article III of the NPT will be the subject of agreements to be concluded

with the IAEA; that to prevent the implementation of the NPT from being incompatible with provisions of the Euratom treaty, safeguards must be defined in such a way that the rights and obligations of the Member States and the Community remain intact, in accordance with the opinion of the Commission issued pursuant to Article 103 of the Euratom Treaty; that for that purpose, the Commission of the European Communities should enter into negotiations with the IAEA; and that it is their intention not to ratify the NPT before such negotiations have produced an agreement.

(ii) We are confident that Euratom and IAEA will arrive at a mutually satisfactory safeguards agreement in accordance with the NPT within the period provided by Article III of the Treaty, bearing in mind the steps which must take place and the time that will be available before commencement of such period. This period will not commence until the treaty's entry into force, which requires the deposit of instruments of ratification by all nuclear-weapon state signatories and forty other states. Moreover, as Secretary Rusk pointed out in his testimony before the Foreign Relations Committee on July 10, 1968:

"Now, as a matter of fact, the safeguards of the sort that are applied by Euratom are very similar to the safeguards applied by the International Atomic Energy Agency, and we see no special problem in meshing those safeguards, in relating them to each other, in such a way that there is confidence in the nature of the safeguards, but that Euratom safeguards and the Euratom system of peaceful cooperation in the use of nuclear energy can proceed without interruption in the light of an agreement to be worked out between Euratom and the IAEA."

If a non-nuclear-weapon country, including a non-nuclear member of Euratom, does not sign the NPT, the treaty would not prevent the transfer of nuclear material or equipment to that country if the nuclear material, or that used or produced in such equipment, would be made subject to the safeguards required by Article III. In the event that a non-nuclear-weapon country, whether signatory or not, does not conclude a safeguards agreement with the IAEA, we would of course, feel obliged to review the situation in light of the existing circumstances.

Question: 3. In what way, if any, does the Non-Proliferation Treaty amend, modify, supplement or incorporate by reference any provisions of federal legislation such as the Atomic Energy Act of 1954, as amended, the EURATOM Cooperation Act of 1958, the International Atomic Energy Agency Participation Act of 1957, the Atomic Energy Community Act of 1955, as amended, or any other relevant Acts of Congress administered by the Commission?

Answer: While we believe the Atomic Energy Commission is in a better position than this Department to supply a definitive response to this question, we have the following observations with respect to the relationship between the Non-Proliferation Treaty and the Atomic Energy Act of 1954, as amended:

- (1) As noted in Secretary Rusk's letter of Submittal of the NPT, Article I of the NPT deliberately parallels United States atomic energy legislation, which has always prohibited the transfer of nuclear weapons or control over them.
- (2) To the extent that it succeeds in preventing the proliferation of nuclear weapons to additional countries, the treaty should have the effect of restricting the number of nations that can satisfy the condition in Section 91(c) of the Atomic Energy Act of having "made substantial progress in the development of atomic weapons." As you know, to date only the United Kingdom has been found to satisfy this condition.
- (3) By explicitly calling for international safeguards, the NPT may be considered to supplement the provisions of Section 123 of the Atomic Energy Act requiring "a guaranty that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons or for any other military purpose." As indicated above, most agreements concluded under this section have, as a matter of practice, provided for such safeguards.
- (4) The Joint Committee on Atomic Energy is presently considering legislation to amend the Atomic Energy Act which would assist the U.S. in the implementation of Article V of the NPT (S3783, HR 18448, HR 18701) by authorizing the AEC to conduct peaceful nuclear explosion services for practical applications domestically and abroad.

With respect to the Euratom Cooperation Act, reference is made to the discussion of our agreements for cooperation with Euratom under question 2 above.

To the best of our knowledge and belief, the Non-Proliferation treaty would not amend, modify, supplement or incorporate by reference any other federal legislation, including the laws specifically mentioned in the question.

FOOTNOTES

1.(a) Agreement for cooperation with IAEA, and the following trilateral agreements:

	<u>Scope</u>	<u>Effective Date</u>
US/IAEA/Argentina	Trilateral for application of IAEA safeguards to US-supplied materials	Mar. 1, 1966
US/IAEA/Australia	"	Sept. 26, 1966
US/IAEA/Austria	"	Dec. 13, 1965
US/IAEA/Republic of China	"	Oct. 29, 1965
US/IAEA/Denmark	"	Feb. 29, 1968
US/IAEA/Greece	"	Jan. 13, 1966
US/IAEA/Indonesia	"	Dec. 6, 1967
US/IAEA/Iran	"	Dec. 4, 1967
US/IAEA/Israel	"	June 15, 1966
US/IAEA/Japan	"	July 10, 1968
US/IAEA/Korea	"	Jan. 5, 1968
US/IAEA/Philippines	"	July 19, 1968
US/IAEA/Portugal	"	Dec. 15, 1965
US/IAEA/South Africa	"	Oct. 8, 1965
US/IAEA/Spain	"	Dec. 9, 1966
US/IAEA/Thailand	"	Sept. 10, 1965
US/IAEA/Vietnam	"	Oct. 25, 1965
US/IAEA/Venezuela	"	March 27, 1968

(b) Agreements with Brazil, Colombia, India, Ireland, Norway, Sweden, Switzerland, Turkey, and the UK (Civil Power) have not yet resulted in trilaterals.

Generally, these agreements provide that in the event of termination the other party is required, at the request of the U.S. Government, to return all special nuclear material received pursuant to the agreement in its possession or in the possession of persons under its jurisdiction. They also provide that the U.S. will compensate the other party for the returned material at the current AEC schedule of prices then in effect domestically. Qualifications on these termination rights appear in the following agreements:

(i) Those with India, Norway, Sweden and Switzerland provide that before termination, the Parties will "carefully consider the economic effects of any such termination", and that neither party will invoke its termination rights until sufficient advance notice has been given so that: in the case of the other party, it is enabled to make arrangements for an alternative source of power or in the case of the U.S. it is permitted to adjust its production schedules.

(ii) The Indian agreement contains an additional qualification under which the United States agrees that it will not invoke its termination rights unless there has been a "widespread acceptance...of the implementation" of Agency safeguards or of provisions similar to those in the bilaterals.